

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

STATE OF MINNESOTA, by its  
Attorney General, Keith Ellison,

Plaintiff,

v.

AMERICAN PETROLEUM  
INSTITUTE, EXXON MOBIL  
CORPORATION, EXXONMOBIL OIL  
CORPORATION, KOCH INDUSTRIES,  
INC., FLINT HILLS RESOURCES LP,  
FLINT HILLS PINE BEND,

Defendants.

Case No. 20-cv-1636-JRT-HB

**NOTICE OF SUPPLEMENTAL AUTHORITY**

The State writes to apprise the Court of three recent decisions that will likely be discussed at the June 1, 2021 hearing on Defendants’ motion to stay execution of the remand order: (1) the Supreme Court’s decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. \_\_\_, 2021 WL 1951777 (2021); (2) the district court’s order staying proceedings in *City of Annapolis v. BP P.L.C. et al.*, No. ELH-21-772 (D. Md. May 19, 2021); and (3) the state court’s denial of defendants’ motion to stay in *City and County of Honolulu v. Sunoco LP, et al.*, No. 1CCV-20-0000380 (Haw. Cir. Ct. May 19, 2021).

**1. *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. \_\_\_, No. 19-1189  
2021 WL 1951777 (2021)**

As this Court correctly noted in its opinion and order granting remand, *Baltimore* involved “a narrow procedural question not at issue here,” namely the scope of appellate

jurisdiction granted by 28 U.S.C. § 1447(d) over appeals from district court orders remanding a case to the state court from which it was removed. *See* Mem. Op. and Order Granting Mot. to Remand and Denying Mot. to Stay, Dkt. 76 at 3, 2021 WL 1215656, at \*1 (D. Minn. Mar. 31, 2021) (“Remand Order”). The Supreme Court resolved that narrow question on May 17 and vacated the decision of the Fourth Circuit. The Court held that when a case has been removed in part based on an assertion of federal officer removal jurisdiction under 28 U.S.C. § 1442 and the district court orders remand, “the whole of its order bec[omes] reviewable on appeal.” *Baltimore, U.S. \_\_\_, 2021 WL 1951777, \*4 (2021)*. The implication of *Baltimore* relevant to this case is that it is now clear the Eighth Circuit has jurisdiction to review all of the asserted bases for removal that this Court rejected.

The Court in *Baltimore* expressly declined to consider the merits of defendants’ asserted grounds for removal because those issues “d[o] not implicate the circuit split that [the Court] took this case to resolve,” noting that “the wiser course is to leave these matters for the Fourth Circuit to resolve in the first instance.” *Id.* The Court did not cast any doubt on the district court’s “extensive order,” which “reviewed each of the defendants’ cited bases for removal before ultimately agreeing with the City and remanding the case to state court.” *Id.* at \*3. The Court also did not disturb the Fourth Circuit’s determination that federal officer jurisdiction was lacking, which petitioners-defendants did not even challenge.

This Court already denied a motion to stay in this case, finding the delay of appeal on a single basis for removal was only a possibility, in part because *Baltimore* did not “bear upon the Court’s decision to remand the case for lack of federal jurisdiction.” Remand

Order at 36, 2021 WL 1215656, at \*14. Defendants’ appeal, which this Court stated “would result inevitably in a much longer delay,” *id.*, has now been filed and asks the Eighth Circuit to consider all jurisdictional grounds asserted in Defendants’ notice of removal. Nothing in *Baltimore* changes this Court’s calculus in denying Defendants’ motion to stay.

**2. *City of Annapolis v. BP P.L.C. et al.*, No. ELH-21-772 (D. Md. May 19, 2021)**

In *Annapolis*, the plaintiff City of Annapolis filed its complaint in state court on February 22, 2021, alleging that a number of fossil-fuel company defendants “‘promoted and profited from . . . the extraction, production, and consumption of oil, coal, and natural gas,’ . . . while concealing the known environmental consequences” of those products, “and that their conduct has ‘substantially contributed to a wide range of dire climate-related effects.’” *See City of Annapolis v. BP P.L.C. et al.*, No. CV ELH-21-772, 2021 WL 2000469, at \*1 (D. Md. May 19, 2021). The defendants removed to the United States District Court for the District of Maryland on March 25, 2021, where the case was related to the *Baltimore* docket before District Judge Elaine Hollander. *See id.* The City of Annapolis moved to remand on April 23, 2021 and filed its supporting brief on May 13. *See id.* & n.1. The day after the Supreme Court issued its decision in *Baltimore*, Judge Hollander stayed all proceedings in *Annapolis*. *See id.* at \*4.

*Annapolis* is critically different from this case in several ways. The plaintiff’s motion to remand in *Annapolis* has not been fully briefed and “is not yet ripe for resolution,” *id.* at \*1 n.1, and Judge Hollander ruled that the Fourth Circuit’s forthcoming decision on remand from the Supreme Court in *Baltimore* will “shape the outcome of—or, at least, the arguments made in support of and in opposition to—the Remand Motion.” *Id.*

at \*4. Therefore, the *Annapolis* district court found a stay of the case—including completing remand briefing—was warranted to prevent “see[ing] months of effort rendered obsolete by the Fourth Circuit’s decision in the *Baltimore Case*.” *Id.* at \*4.

Here, in contrast, the remand briefing is not only completed, but this Court has ordered the case remanded to state court. The Eighth Circuit will review Defendants’ arguments for removal in the normal course of appeal. In this identical posture, Judge Hollander denied a stay pending appeal in *Baltimore*, as did the Fourth Circuit and Supreme Court. *See Mayor & City Council of Baltimore v. BP P.L.C.*, No. CV ELH-18-2357, 2019 WL 3464667, at \*1 (D. Md. July 31, 2019) (district court order denying stay pending appeal); Ex. 3 to Pl. State of Minnesota’s Opp. to Mot. to Stay, Dkt. 92-3 (Apr. 13, 2021), *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644 (4th Cir. Oct. 1, 2019) (court of appeals order denying stay pending appeal); *BP P.L.C. v. Mayor & City Council of Baltimore*, 140 S. Ct. 449 (2019) (Supreme Court order denying stay pending appeal). So, too, did all levels of the federal judiciary in *Rhode Island*, Ex. 4 to Pl. State of Minnesota’s Opp. to Mot. to Stay, Dkt. 92-4 (Sept. 10, 2019) (district court order denying stay pending appeal), Ex. 5 to Pl. State of Minnesota’s Opp. to Mot. to Stay, Dkt. 92-5 (1st Cir. Sept. 10, 2019), *B.P. P.L.C., et al. v. Rhode Island*, No. 19A391 (U.S. Oct. 22, 2019), and in Boulder, *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 423 F. Supp. 3d 1066 (D. Colo. 2019), *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, No. 19-1330 (10th Cir. Oct. 17, 2019), *Suncor Energy (U.S.A.) Inc., et al. v. Board of County Commissioners of Boulder County, et al.*, No. 19A428 (Oct. 22, 2019), as well as the district court and Ninth Circuit in *Honolulu, City & Cty. of Honolulu*

*v. Sunoco LP*, No. 20-CV-00163-DKW-RT, 2021 WL 839439 (D. Haw. Mar. 5, 2021), *City & Cty. of Honolulu v. Sunoco LP*, No. 21-15313, 2021 WL 1017392 (9th Cir. Mar. 13, 2021) (defendants did not seek a stay from the Supreme Court in *Honolulu*). These decisions by multiple courts reflect the unique considerations at issue in the recent *Annapolis* ruling—considerations which were not present in *Baltimore*, *Rhode Island*, *Boulder*, and *Honolulu*—and which are not present here.

**3. *City and County of Honolulu v. Sunoco LP, et al.*, No. 1CCV-20-0000380 (Haw. Cir. Ct. May 19, 2021)**

In *Honolulu*, the City and County of Honolulu sued several fossil fuel companies in Hawaii state court, alleging that the defendants injured the City and County by misleading the public about the dangers their products posed to the climate. *See City & Cty. of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW-RT, 2021 WL 531237, at \*1 (D. Haw. Feb. 12, 2021). The district court granted the plaintiff's motion to remand to state court. *See id.* at \*9. The district court denied a motion to stay its remand order pending appeal, as did the Ninth Circuit. *See City & Cty. of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW-RT, 2021 WL 839439 (D. Haw. Mar. 5, 2021); *City & Cty. of Honolulu v. Sunoco LP*, No. 21-15313, 2021 WL 1017392 (9th Cir. Mar. 13, 2021).

After remand, the defendants filed a motion in state court to stay pending the outcome of their appeal to the Ninth Circuit. On May 19, 2021, the state court judge denied defendants' motion from the bench. *See Ex. 1* at 25–26, Tr. of Electronically Recorded Proceedings, *City and County of Honolulu v. Sunoco LP, et al.*, No. 1CCV-20-0000380 (Haw. Cir. Ct. May 19, 2021). Stays pending appeal in the *Honolulu* matter have now been

denied by the District of Honolulu, the Ninth Circuit, and the state court on remand. The same reasons for denying the stay in *Honolulu* are present in this case.

### CONCLUSION

The recent decisions listed above provide further support for denying Defendants' motion to stay execution of this Court's remand order and returning this case to state court.

Dated: May 27, 2021

Respectfully Submitted,

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